

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 2666
(JNE/FLN)

This Document Relates to All Actions

**JOINT MOTION REGARDING
CONTINUED SEALING**

Documents have been filed under temporary seal in connection with the following motions:

Plaintiffs' Motion for Exclude the Testimony of Jonathan B. Borak (Doc.
No. 778)

*Plaintiffs' Motion to Exclude the Testimony of Theodore R.
Holford* (Doc. No.
801)

Pursuant to LR 5.6, the parties submit this Joint Motion Regarding Continued Sealing.

DKT. NO.	DESCRIPTION OF DOCUMENT	MARK "X" IN APPLICABLE COLUMN			NONPARTY THAT DESIGNATED DOC. CONFIDENTIAL (IF ANY)	REASON WHY DOCUMENT SHOULD REMAIN SEALED OR BE UNSEALED ¹
		Parties Agree Doc. Should Remain Sealed	Parties Agree Doc. Should Be Unsealed	Parties Disagree		
780, 803	<p>Exhibit E to the Declaration of Genevieve M. Zimmerman (Doc No. 784); Ex. P to the Declaration of Genevieve M. Zimmerman (Doc. No. 807):</p> <p>Chart entitled "Joint infection rate and BH unit sales by year" marked as Exhibit 77 at the Deposition of Albert P. Van Duren (Bates 3MBH00554267)</p>			X	Not Applicable.	<p>Plaintiffs' position. The document is a one-page chart that tracks gross sales of Bair Hugger units vs. joint infection rates as reported in publicly available Nationwide Inpatient Sample (NIS) of the Healthcare Utilization Project of the Agency for Healthcare Research and Quality of the US Department of Health (AHRQ). Joint infection rates are tracked through voluntary reporting of key ICD-9 codes. Nothing in the chart details Defendants' customer lists, purchasing history, pricing or the like. Defendants have represented in open Court that Bair Hugger is used in over 50,000 surgeries every day. While Defendants may not want the public to know they were internally comparing BH sales rates with PJIs, nothing in this document presents risk of competitive harm or disadvantage.</p> <p>Defendants' position. The chart reflects internal, confidential Bair Hugger sales data through 2012 that is likely to cause competitive harm to 3M if publicly disclosed. The chart</p>

						was designated Confidential by Defendants pursuant to the Protective Order.
781, 804	Exhibit F to the Declaration of Genevieve M. Zimmerman (Doc. No. 784); Ex. Q to the Declaration of Genevieve M. Zimmerman (Doc. No. 807): Excerpts from the 11/7/16 deposition of Albert P. Van Duren		X		Not Applicable.	

Dated: November 7, 2017

Respectfully submitted,

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ⁱ This explanation should be very brief. For example:

1. contains information designated as confidential by a nonparty
2. contains information designated as confidential under a non-disclosure agreement between plaintiff and nonparty
3. contains information designated as confidential under a protective order issued in this case [MDL 2666 Docket No. 39]
4. discovery materials filed in connection with a motion under Fed R. Civ. P. 37
5. reveals trade secrets of defendant
6. reveals proprietary business methods of plaintiff
7. confidential financial records

8. confidential medical records
9. contains termination information regarding former employees of defendant
10. reveals information regarding a minor
11. contains information ordered sealed by the court on DATE [Docket No. XX]